

FILED

AUG 15 1989

ENVIRONMENTAL PROTECTION AGENCY
REGION IX
HEARING CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In re:) Docket No. TSCA-09-89-0015
ALUMINUM COMPANY OF AMERICA) COMPLAINT
Respondent.) AND
NOTICE OF OPPORTUNITY
FOR HEARING

I

COMPLAINT

This is a civil administrative action instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2615(a). The Complainant is the United States Environmental Protection Agency (EPA), Region 9. The Respondent is Aluminum Company of America which is, and was at all times relevant to this Complaint, a Pennsylvania registered corporation, with a place of business located at 5151 Alcoa Avenue, Vernon, California.

The Administrator of the EPA is authorized by TSCA Section 16(a)(1), 15 U.S.C. Section 2615(a)(1), to assess a civil penalty not to exceed \$25,000 per day for each violation of TSCA

1 Section 15 (15 U.S.C. 2614). Authority to file a complaint to
2 assess a civil penalty has been delegated to the Regional
3 Administrator of the EPA, Region 9, by EPA Order 1200 TN 103, and
4 by the Regional Administrator to the Director, Air and Toxics
5 Division, by EPA Regional Order 1290.2A.

6 This Complaint and Notice of Opportunity for Hearing
7 (Complaint) serves as notice that the Complainant has reason to
8 believe that the Respondent has violated Section 15 of TSCA,
9 15 U.S.C. 2614, as follows:

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11 Count I

- 12 1. Aluminum Corporation of America, a "person" within the meaning
13 of 40 C.F.R. 761.3 (hereinafter "Respondent") operates a
14 facility located at 5151 Alcoa Avenue, Vernon, California
15 (hereinafter "Facility").
- 16 2. On May 11, 1989, representatives of the U.S EPA conducted an
17 inspection of the Facility to determine compliance with
18 Federal regulations, 40 CFR part 761 et seq., governing
19 PCBs.
- 20 3. At the time of inspection, the Respondent owned and operated
21 hydraulic systems that had contained PCBs at concentrations
22 above 50 ppm at the Facility, and therefore is subject to 40
23 C.F.R. 761.30(e) which regulates the use of PCBs in
24 hydraulic systems.
- 25 4. 40 C.F.R. Section 761.30(e) requires that each person who
26 owns a hydraulic system that ever contained PCBs at
27 concentrations above 50 ppm, must test the concentration of

1 PCBs in the hydraulic fluid of each system, no later
2 November 1, 1979 and at least annually thereafter. All test
3 sampling must be performed at least three months after the
4 most recent fluid refilling. When a test shows that the PCB
5 concentration is less than 50 ppm, testing under this
6 paragraph is no longer required. Within six months of a
7 test, under paragraph (e)(1) of this section that indicates
8 that a system's fluid contains 50 ppm or greater PCB, the
9 system must be drained of the PCBs and refilled with fluid
10 containing less than 50 ppm PCB. Data obtained as a result
11 of paragraph (e)(1) of this section must be retained for
12 five years after the hydraulic system reaches 50 ppm.

- 13 5. At the time of inspection, the Inspectors observed that
14 Respondent had failed to test three hydraulic systems (the
15 1,000 Ton Forge Peanut Press, the Straightening Press, and
16 the Peeler) for PCB concentrations by November 1, 1979 and
17 failed to reduce the concentration of these hydraulic
18 systems to less than 50 ppm PCBs, in violation of 40 C.F.R.
19 761.30(e)(1) and 15 U.S.C. 2614(1)(C).

20 Count II

- 21 1. Count II incorporates by reference the allegations contained
22 in Paragraph Numbers 1 and 2 of Count I as if fully recited
23 herein.
- 24 2. At the time of inspection, the Inspectors determined that
25 the Respondent had, prior to 1988, owned and operated PCB
26 capacitors at the Facility, and, at the time of inspection,
27 maintained PCB hydraulic systems at the Facility, and

therefore is subject to the requirements of 40 C.F.R. 761.60 which regulates the disposal of PCBs and PCB Items.

3. Spills, leaks, and other uncontrolled discharges of PCBs at concentrations of 50 ppm or greater constitute the disposal of PCBs. 40 C.F.R. 761.60(d)(1). Unless otherwise specifically provided, PCBs must be disposed of in an EPA approved incinerator, chemical waste landfill, or high efficiency boiler. 40 C.F.R. 761.60(a).

4. At the time of inspection, the Inspectors obtained evidence indicating PCB spills with PCB contamination ranging from 34 ppm to 4400 ppm at the following locations: Floor #10 Press Capacitor Area, #10 Press Wall "Lt," #10 Press Pump Area, #10 Press Wall "R," and Peanut Press Tract 4. Such releases or spills by Respondent into the environment constitute uncontrolled discharges of PCBs under 40 C.F.R. 761.60(d)(1), in violation of 40 C.F.R. 761.60(a) and 15 U.S.C. 2614(1)(C).

Count III

1. Count III incorporates by reference the allegations contained in Paragraph Numbers 1 and 2 in Count I as if fully recited herein.

2. At the time of inspection, Respondent stored one PCB hydraulic system (1,000 Ton Forge Peanut Press) for disposal at the Facility, and therefore is subject to the requirements of 40 C.F.R. 761.65 which regulates the storage of PCB Items.

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- 1 3. PCB hydraulic systems are PCB Articles and PCB Items within
2 the meaning of 40 C.F.R. 761.3.
- 3 4. 40 C.F.R. 761.65(a) requires that PCB Items stored for
4 disposal before January 1, 1983 shall have been disposed of
5 by January 1, 1984. 40 C.F.R. 761.65(a). PCB Items stored
6 for disposal after January 1, 1983 shall be disposed of
7 within one year from their initial date of storage.
8 40 C.F.R. 761.65(a).
- 9 5. Information collected by the Inspectors at the time of
10 inspection indicated that the 1,000 Ton Forge Peanut Press
11 had been in storage for disposal prior to January 1, 1983
12 and Respondent had failed to dispose of the it before
13 January 1, 1984, in violation of 40 C.F.R. 761.65(a), and
14 15 U.S.C. 2614(1)(C).

15 Count IV

- 16 1. Count IV incorporates by reference the allegations contained
17 in Paragraphs 1 and 2 of Count I as if fully recited herein.
- 18 2. At the time of inspection, the Inspectors determined that
19 the Respondent had, prior to 1988, owned and operated
20 approximately 50 - 60 PCB large capacitors at the Facility,
21 and therefore is subject to 40 C.F.R. 761.180(a) which
22 requires recordkeeping for PCBs and PCB Items.
- 23 3. Owners and operators of facilities using PCBs and PCB Items
24 or storing PCBs and PCB Items for reuse shall develop and
25 maintain records on the disposition of PCBs and PCB Items
26 which include the information specified in 40 C.F.R. 761.180
27 (a)(1)-(3). These records shall form the basis of an annual

1 document which is to be prepared by July 1 covering the
 2 previous calendar year. 40 C.F.R. 761.180(a).
 3 4. At the time of inspection, the Inspectors observed that
 4 Respondent had failed to prepare PCB annual documents for
 5 the calendar years 1978 through 1982 and that PCB annual
 6 documents for calendar years 1983 through 1987 failed to
 7 include all information specified by 40 C.F.R. 761.180(a)(1)
 8 through (3), in violation of 40 C.F.R. 761. 180(a), and
 9 15 U.S.C. 2614(1)(C).

10 II

11 PROPOSED CIVIL PENALTY

12 Section 16(a) of TSCA, 15 USC 2615(a), authorizes a civil
 13 penalty of up to \$25,000 per day for each violation of Section 15
 14 of TSCA, 15 USC 2614. The civil penalty assessment is derived
 15 through application of the "Guidelines for Assessment of Civil
 16 Penalties Under Section 16 of the Toxic Substances Control Act;
 17 PCB Penalty Policy" Federal Register, Vol. 45, No. 177
 18 (September 10, 1980). Based upon the foregoing Guidelines, EPA
 19 proposes to assess the following civil penalty:

20 Count I

21 IMPROPER USE (Failure to test and reduce concentrations of
 22 PCB hydraulic systems).....\$3,000.00
 23 40 C.F.R. 761.30(e)
 15 U.S.C. 2614 (1)(C)

23 Count II

24 IMPROPER DISPOSAL (PCB Spills).....\$5,000.00
 25 40 C.F.R. 761.60(a) and (d)
 15 U.S.C. 2614 (1)(C)

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Count III

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IMPROPER STORAGE FOR DISPOSAL (Failure to dispose of PCB
hydraulic system by 1/1/84).....\$1,500.00
40 C.F.R. 761.65
15 U.S.C. 2614 (1)(C)

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Count IV

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IMPROPER RECORDKEEPING (Failure to prepare and maintain
complete PCB annual documents).....\$ 200.00
40 C.F.R. 761.180
15 U.S.C. 2614 (1)(C)

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Total Proposed Penalty.....\$9,700.00

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III

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NOTICE OF OPPORTUNITY FOR HEARING

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You have the right to request a hearing on any material fact
contained in the Complaint or the amount of the proposed penalty.
If you wish to request a hearing and avoid being found in
default, you must file a written Answer to the Complaint with the
Regional Hearing Clerk, EPA Region 9, 215 Fremont Street, San
Francisco, California 94105, within twenty (20) days of your
receipt of the Complaint. The Answer must clearly and directly
admit, deny, or explain each of the factual allegations contained
in the Complaint with regard to which you have any knowledge. A
failure to admit, deny, or explain any material fact allegation
will constitute an admission of the allegation. The Answer must
also state (1) the circumstances or arguments which constitute
the grounds of defense, (2) the facts which you intend to place
at issue, and (3) whether a hearing is requested.

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If you fail to file a written Answer within twenty (20) days
of your receipt of the Complaint, you may be found in default.
Your default will constitute an admission of all facts alleged in

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1 the Complaint and a waiver of your right to a hearing. The
2 penalty proposed in the Complaint will be imposed without further
3 proceedings.

4 The public hearing that you request will be held in a
5 location determined in accordance with 40 C.F.R. Part 22. The
6 hearing will be conducted in accordance with the provisions of
7 the Administrative Procedure Act, 5 U.S.C. 552 et seq., and the
8 Rules of Practice, 40 CFR Part 22 (45 F.R. 26360), a copy of
9 which accompanies the Complaint.

10 IV

11 SETTLEMENT CONFERENCE

12 Whether or not you request a hearing, you may confer
13 informally with EPA to discuss the alleged facts, violations or
14 amount of the proposed penalty. An informal conference does not,
15 however, affect your obligation to file a written Answer within
16 twenty (20) days of your receipt of the Complaint.

17 Any settlement reached as a result of an informal conference
18 will be embodied in a written Consent Agreement and Order. The
19 issuance of the Consent Agreement and order will constitute a
20 waiver of your right to a hearing on any matter to which you have
21 stipulated.

22 If a settlement cannot be reached through an informal
23 conference, the filing of a written Answer within twenty (20)
24 days of your receipt of the Complaint will preserve your right to
25 a hearing.

26 EPA encourages all parties against whom a penalty is
27 proposed to explore the possibility of settlement. To request an

1 informal conference, you should contact David M. Jones, Assistant
2 Regional Counsel, EPA, Region 9, 215 Fremont Street, San
3 Francisco, California 94105, telephone number (415) 974-7364.

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6/8/89

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Date

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David P. Howekamp

David P. Howekamp
Director
Air and Toxics Division

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CERTIFICATION OF SERVICE

I hereby certify that the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing, Docket No. TSCA-09-89-0015 was filed with the Regional Hearing Clerk, Environmental Protection Agency, Region 9, and that a copy addressed as follows, was served by mailing certified mail, return receipt requested, postage prepaid, in a United States Postal Mail Box, at City and County of San Francisco, California, on the 14th day of August, 1989:

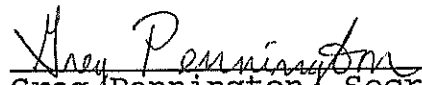
Paul O'Neill
President and Chief Executive Officer
Aluminum Company of America
1501 Alcoa Building
Pittsburgh, PA 15219

Certified Mail No.
P-841 509 821

C. T. Corporation System
Registered Agent for Aluminum
Company of America
818 West 7th Street
Suite 1004
Los Angeles, CA 90017

Certified Mail Nol
P-765 057 434

Dated at City and County of San Francisco, California, this
14th day of August, 1989.


Greg Pennington, Secretary
Pesticides and Toxics Branch
Air and Toxics Division
EPA, Region 9